

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'सी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH: KOLKATA
श्री संजय गर्ग न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष
[Before Shri Sanjay Garg, Judicial Member & Shri Rajesh Kumar, Accountant Member]

I.T.A. No. 593/Kol/2022
Assessment Year : 2014-15

CCI Logistics Limited (PAN: AACCC 5289 J)	Vs.	DCIT, CC-1(3), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	18.05.2023
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	25.07.2023
For the Appellant/ निर्धारिती की ओर से	Shri Miraj D Shah, A.R
For the Respondent/ राजस्व की ओर से	Shri Vijay Kumar, Addl. CIT, Sr. DR

ORDER / आदेश

Per Shri Rajesh Kumar, AM:

This is the appeal preferred by the assessee is against the order of the Ld. Commissioner of Income Tax(Appeals)-20, Kolkata (hereinafter referred to as the Ld. CIT(A)”) dated 21.09.2022 for the AY 2014-15.

2. Issue raised in ground no.1 is general in nature and does not require any specific adjudication.

3. Issue raised in ground nos. 1 to 6 is against the confirmation of addition of Rs. 2,80,00,000/- by the Ld. CIT(A) as made by AO on the basis of dumb/rough documents seized.

4. Facts in brief are that a search and seizure operation u/s 132 of the Act was conducted on 13.03.2014 in the residential and business premises of the various parsons belonging to the M/S CCI Logistics Limited and various incriminating materials/documents were seized. Thereafter notice u/s 153A of the Act was issued on 31.10.2014 to the assessee and a return of income was also filed in response thereto followed by statutory notices being duly issued and served on the assessee. During the course of assessment proceedings, AO observed that the documents found and seized during search namely page 2 of CCIL/1 revealed that the assessee has given cash on various dates to Gopal Agarwal aggregating to Rs. 2,80,00,000/-. The AO extracted the details of the said amount in para 6 of assessment order. The assessee explained before the AO that the cash was handed over to Shri Gopal Agarwal for safe keeping when the assessee happened to be out of station and also submitted that the said cash was as per and duly appeared in the books of accounts of the assessee. In order to corroborate the said arguments, the ld AR also filed an auditor certificate to prove that cash was available on all the above dates. The AO also noted from the statement of Shri Gopal Agarwal recorded on 13.03.2014 in he stated that stated that cash was handed over to Mr. Mahendra Sethia at the instruction of Shri Satish Sharma director of company and in the statement of Shri Satish Sharma recorded on 14.03.2014, to question no. 14, he replied that these transactions were made with Sri Gopal Agarwal, Ajay Gupta, Subhashji and most of these payments made were Jamakharchi transactions which were reflected at a different places. The AO also noted that Shri Mahendra Sethia was an entry operator who was issuing accommodation entries in the form of share capital and share investment and thus it is corroborated from this document that this amount of Rs. 2,80,00,000/- cash belonged to the assessee which was handed over to Shri Mahendra Sethia and was in the form of share capital or sale of investment etc. Accordingly the said amount was added to

the income of the assessee as undisclosed income besides making other additions in the assessment framed u/s 143(3) of the act dated 31.03.2016.

5. In the appellate proceedings the appeal of the assessee is dismissed by the Ld. CIT(A) after taking into account various contentions and arguments of the assessee by observing and holding as under:

“6.3(a) I have carefully considered the facts of the case and submission of the appellant. Appellant has laid great emphasis on the issue that seized document is a ‘dumb document’ and hence no cognigence should be taken of the notings on that paper. However, while explaining the contents of the document, appellant contradicts itself as it has accepted that notings reflect the cash given to Shri Gopal Agarwal on the various dates for safe keeping. Thus, the notings reflect genuine transactions. The explanation offered by the appellant establishes the authenticity of date-wise cash handed over to Shri Gopal Agarwal. Thus, assessee’s own explanation confirmed the date on which assessee’s cash has been handed over to Shri Gopal Agarwal. On this document there is information about the date, amount of cash and the person whom this cash was handed over. Further it is also accepted that the cash belongs to assessee. So, there is no dispute about these facts and the information contained in this document is genuine and related to assessee’s business. Under the circumstances, the seized document can not be termed as ‘dumb document’ and the case laws mentioned by the appellant are not relevant.

6.3(b) The only dispute about the noting is whether the cash mentioned on the loose paper is from disclosed sources and purposes for which it has been given. Appellant has claimed that these are its own cash, as per the cash balance in the books and these were handed over to Shri Gopal Agarwal for safe keeping when director was out of town. However, this explanation does not appear to be genuine. A.O. has pointed out that assessee had much higher cash balances on the dates which have been mentioned in the seized document. Under the circumstances, it does not make any sense that assessee would think about safety of only a part of total cash available. Further, it is worthwhile to take note that the job of tax consultant (Gopal Agarwal) would not be safe keeping of the assessee’s cash/assets.

Further, in the explanation, assessee has failed to elaborate as to how cash kept at the premises of Shri Gopal Agarwal would be more safer than when it is kept at its own premises. Whether Shri Gopal Agarwal’s locality and building was more secure than that of the assessee. On the date of search, the director Shri Satish Sharma had mentioned in his statement that these cash were given for Jama Kharchi transaction. On the date of search, statement of Shri Gopal Agarwal was also taken and Shri Gopal Agarwal had stated that transaction reflected on the seized paper were meant for Shri Mahendra Sethia. Thus, both Mr. Satish Sharma and Shri Gopal Agarwal in their impromptu statement neither of them said anything about the safe keeping of the cash in the office of Shri Gopal Agarwal. It is only after the search was concluded and they had the opportunity to meet each other that their stand has changed as afterthought, to conceal the fact that the transaction mentioned on the seized paper are in respect of unaccounted cash from undisclosed sources of the assessee.

6.3(c) Appellant has also emphasized on cross examination of Mr. Mahendra Sethia. However, this is just a ploy to divert attention from the main issue and present a picture that some technical lapses have happened while finalizing the assessment. Name of Mr. Mahendra Sethia was mentioned by Shri Gopal Agarwal in his statement. As per information available

with the Investigation Wing, Shri Mahendra Sethia is an entry operator involved in providing accommodation entry for share capital, bogus, unsecure loan, LTCG entries etc. These things have been accepted by Mr. Mahendra Sethia himself when his statement was recorded on earlier occasion. Whether the cash handed over to Shri Gopal Agarwal was routed with help of Mr. Mahendra Sethia or some other person, is not relevant here. What is relevant is the source of cash and whether these are accounted in the books. As per the provisions of section 132(4A) onus is on the assessee to explain the contents of the seized documents found from his premises during search. Assessee has to first discharge its responsibility and prove that the cash transactions mentioned on the seized document are from disclosed source. Assessee's theory of the cash being part of the cash on hand and given for safe keeping to Shri Gopal Agarwal whenever assessee went out of town, is not convincing. A.O. has not made addition on the basis of statement of Shri Mahendra Sethia. Rather his name was suggested by Shri Gopal Agarwal. Assessee has failed to provide a satisfactory reply regarding notings on seized paper. Hence, addition has been made. Under the circumstances, cross examination of Shri Mahendra Sethia is not relevant.

6.3(d) As mentioned above, in the first place there was bigger cash balance as per books on the dates mentioned on seized documents, but the cash given for alleged safe keeping appears to be only part of the total cash balance. It does not make sense that assessee would be concerned for safe keeping of only a part of its cash balance. Secondly, assessee has failed to explain as to how cash at the premises of Mr. Gopal Agarwal would be safer than when kept at its own premises. Third, if the cash was, really given for safe keeping, then only single transaction would be mentioned on a piece of paper and a prudent person is expected to get the signature of the person whom valuable are being handed over. Further, the manner in which these transactions have been recorded, it shows that these are part of same running transaction in which benefit in lieu of giving cash are periodically received and at the end of the complete transaction, both the parties need to sit down and tally their accounts to ensure that the transactions are squared off. The notings on the seized document further shows that a transfer of cash has taken place regularly and the gap between two transactions are just two or three dates on average and sometimes it is on consecutive dates also, for example, on 19-04-2013 and 20-04-2013. If the assessee's theory of safe keeping is true, then why would the assessee bring back its cash when on the same date the director has to go out and again. Appellant has also not explained, with supporting evidence, as to whether he had travelled on all these dates and for what purpose. Further, perusal of the seized documents shows that there are 14 occasions on which cash has been allegedly given for safe keeping. However, it looks very interesting that on 12 occasions same amount i.e. Rs.20,00,000/- each has been handed over. It is also not comprehensible as to why the assessee could not purchase a good quality safe for itself when it has the means and also necessity for handling and safe keeping of huge amount of cash. Cash given to Shri Gopal Agarwal are unaccounted cash from undisclosed sources. On this loose sheet there is no mention of return of cash. If cash was returned, its information would have been captured by the accountant. Perusal of the notings clearly point out that there has been only one way movement of cash. But in the books, there are no recording of any transactions against these cash payments. Thus, it is apparent that these cash are unaccounted cash from undisclosed sources of assessee.

6.3(e) As is apparent from the above discussion, there are several loopholes in the explanation of the assessee. The explanation given by the assessee does not pass the test of human probabilities. Circumstantial evidences also suggest that assessee's explanation is not true. Seized document was found at the premises of the assessee and it is assessee's responsibility to satisfactorily explain its contents. However, as discussed above, appellant has failed to provide cogent explanation for the cash given to Shri Gopal Agarwal. Under the circumstances, the cash transaction reflected on the seized documents are held to be

unaccounted cash of the assessee from undisclosed sources. Hence, addition of Rs.2,80,00,000/- is confirmed.

6. The Ld. A.R vehemently submitted before us that the order was passed by Ld. CIT(A) is wrong and contrary to the facts on record. The Ld. A.R submitted that AO has made an addition on the basis of dumb document on which Rs. 2,80,00,000/- was mentioned on different dates which was admitted by the assessee to have been paid to Shri Gopal Agarwal who was CA of the assessee for safe keeping of same as and when the directors of the assessee happened to be out of station. The A.R referred to the statement of Shri Gopal Agarwal and Shri Satish Sharma by submitting that nowhere in those statements it has been admitted that the cash was given for issuing accommodation entries. The AR stated that the addition has been made to the tune of Rs. 2,80,00,000/- to the income of the assessee on the ground that Mr. Mahendra Sethia is engaged in the business of accommodation entry provider in the form of share capital and share investment through Shri Gopal Agarwal which is not proved and is devoid of any substantive basis. The Ld. A.R, while referring to audited balance sheet as filed at page no. 80 to 100 of PB, pointed out that there has been no increase in share capital and share premium during the year which stood at Rs.2,15,83,750/- and Rs. 43,11,41,250/- as on 31.3.2013 and 31.3.2014 respectively. The Ld. A.R also referred to audited balance sheet at page 88 of the PB and submitted that loans taken by way of long term borrowings were Rs . 50,00,000/- and Rs. 88,27,89/- as on 31.3.2013 and as on 31.3.2014 respectively and these loans were taken from the related parties. Thereafter the Ld. A.R, while referring to schedule no. 4 of long term borrowings at page 44, submitted that only increase in loans and advances is in respect of Shri Sunil Kumar Agarwal from whom unsecured loan has been taken and he is the relative of the director of the assessee company. The Ld. A.R further stated that addition made by the AO was also confirmed by the Ld. CIT(A) without any corroborating material having been brought on record to justify addition. The Ld. A.R in defense of his argument he relied on the following decisions:

i) CBI vs. V.C. Shukla 1998 taxmann.com 2155 (SC)

ii) Mohd. Yusuf & Anr. Vs. D & Anr. AIR 1968 Bom 112, Supreme Court

iii) DCIT vs. Haresh R. Vasani, ITA No. 580/AHD/2010

iv) S. P . Goyal v.s DCIT CIT (2002) 82 ITD 85 (Mum)TM

v) Nagarjuna Construction Co. Ltd. vs. DCIT (2012) 23 taxmann.com 239

The Ld. A.R also submitted that the AO has made the addition on the basis of statement of Sri Gopal Ji, Ajay Gupta, Subhashji without any discussion as to how these persons were connected with assessee. The Ld. A.R further submitted that no cross-examination was allowed to the assessee before making the addition and therefore on that basis too the addition deserved to be deleted by relying on the following decisions:

- i) Supreme Court in the case of Andaman Timber Industries in Civil Appeal No. 4228 of 2006 (2015) 324 E.L.T 641 (SC)
- ii) H R Mehta vs. ACIT 387 ITR 561, Bombay High Court
- iii) CIT vs. Ashwani Gupta 322 ITR 396 Delhi High Court
- iv) CIT vs. SMC Share Brokers Ltd. 288 ITR 345 Delhi High Court
- v) CIT vs. Eastern Commercial Enterprises (1994) 210 ITR 103, 111 (cal)

The Ld. A.R therefore prayed that the order of Ld. CIT(A) may kindly be reversed and AO may be directed to delete the addition.

7. The Ld. D.R on the other hand relied heavily on the order of authorities below. The Ld. D.R stated that theory that cash was handed over to Shri Gopal Agarwal by the directors of the assessee has also been an afterthought. The ld DR submitted that it is clearly mentioned in the document seized that cash totaling to Rs. 2,80,00,000/- which belonged to the assessee was given to Mahender Setia who was entry operator and therefore the addition was rightly made as well confirmed too by the ld CIT(A).

8. We have heard the rival contentions and perused the material on record. The undisputed facts are that during the course of search a document was recovered which

contained the details of cash given on various dates aggregating to Rs. 2,80,00,000/- to Shri Gopal Agarwal which was stated to be given by the assessee to Shri Gopal Agarwal who is a CA of the assessee for safe keeping. We also note that the cash was available in its books of account on all the dates whenever the same was given a copy of which has been produced before the authorities below as well as before us. We note that statements were recorded by Shri Gopal Agarwal and Shri Satish Sharma. Mr. Satish Sharma stated that these payments were made basically Jamakharchi transactions which were reflected at different places and he is not in a position to explain right now. Mr Gopal Sharma in his statement stated that these payments were handed over to Mr. Mahendra Sethia at the instructions of Shri Satish Sharma. Therefore the AO noted that Mr. Mahendra Sethia is engaged in the business of supply of bogus entries as is apparent from the admissions in a statements recorded of Shri Gopal Agarwal and Satish Sharma. We note that the AO added the amount to the income of the assessee on the basis that it was given to Mahendra Sethia who is an entry operator providing accommodation entries in the form of share capital or sale of investments etc. We also note that document found during the course of search was not signed by anyone from the assessee company or by Gopal Agarwal. However it is stated that cash was paid to Gopal Agarwal which the assessee admitted and explained by stating that it was given for safe keeping on various dates when directors are out of station which was also corroborated by availability of cash balances on the respective dates. In our opinion the addition has been made on the basis of presumptions and assumptions that Shri Mahendra Sethia is engaged in the business of providing accommodation entries of share capital or sale of investment without bringing any corroborative material on record. Besides we find that since the document found during the course of search is not signed by anyone from the assessee company, it is nothing less than a dumb documents which can not be basis of addition alone. The case of the assessee finds support from the several decisions as stated hereinabove. Accordingly on this account the addition cannot be sustained and deserve to be deleted. We further note that the addition has been made on the basis of statement of Gopal Agarwal who nowhere named the assessee to be beneficiaries of

accommodation entries and also no cross examination was ever provided to the assessee of Mr Gopal Agarwal and therefore as has been held by the Hon'ble Supreme Court in the case of Andaman Timber Industries (supra) and Hon'ble Bombay High Court in the case of H R Mehta (supra), the addition made with opportunity of cross examination is bad in law. We have also perused the annual audited accounts of the assessee during the year and observe that there has not been any issue of equity share capital or raising of fresh loans. We observe that that whatever little unsecured loans were raised were from the relatives. In view of the facts and circumstances and ratio laid down we are inclined to set aside the order of Ld. CIT(A) and direct the AO to delete the addition.

9. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 25th July, 2023

Sd/-
(Sanjay Garg /संजय गर्ग)
Judicial Member/न्यायिक सदस्य

Sd/-
(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 25th July, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- CCI Logistics Limited, P-4, Black Burn Lane, Kolkata-700012
2. Respondent – DCIT, Central Circle-1(3), Kolkata
3. Ld. CIT(A)- 20, Kolkata
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata